

GENTRY LOCKE
RAKES & MOORE^{LLP}
Attorneys

Charles L. Williams

(540) 983-9375

charles_williams@gentrylocke.com

Facsimile 540-983-9400

Post Office Box 40013

Roanoke, Virginia 24022-0013

May 23, 2011

VIA OVERNIGHT MAIL

Ms. Jessica O'Neill
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Office of Regional Counsel (3RC30)
1650 Arch Street
Philadelphia, PA 19103

Mr. Martin Matlin
U.S. Environmental Protection Agency, Region III
Office of Land Enforcement (3LC70)
1650 Arch Street
Philadelphia, PA 19103

Re: Commonwealth Laminating & Coating, Inc.

Dear Ms. O'Neill and Mr. Matlin:

Enclosed is the response of Commonwealth Laminating & Coating, Inc., that we have discussed over the last several weeks. Once you have had a chance to review this, let's schedule a follow-up discussion.

Very truly yours,

GENTRY LOCKE RAKES & MOORE, LLP



Charles L. Williams

CLW:lbs
Enclosures

cc: Mr. M. Brandon Lane
Paul G. Klockenbrink, Esq.



COMMONWEALTH
LAMINATING & COATING, INC.

May 20, 2011

VIA OVERNIGHT MAIL

Ms. Jessica O'Neill
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Office of Regional Counsel (3RC30)
1650 Arch Street
Philadelphia, PA 19103

Mr. Martin Matlin
U.S. Environmental Protection Agency, Region III
Office of Land Enforcement (3LC70)
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Commonwealth Laminating & Coating, Inc.

Dear Ms. O'Neill and Mr. Matlin:

I write on behalf of Commonwealth Laminating & Coating, Inc. ("CLC") in response to the United States Environmental Protection Agency's March 22, 2011 "Request for Further Information and Opportunity to Show Cause" letter (the "Show Cause Letter") relating to allegations associated with waste management requirements under the Resource Conservation Recovery Act ("RCRA").

As discussed in a conference call on May 10, 2011, we have information relevant to this matter, which we believe the EPA should consider. We have constructed our presentation of this information to be consistent with the numbered alleged violations set forth in Section I of the aforementioned Show Cause Letter, and provide a separate narrative in response to each alleged violation.

1. *Alleged Operation Without a Permit or Interim Status*

Regarding the EPA's allegation that CLC's facility located at 345 Beaver Creek Drive, Martinsville, VA (the "Facility") did not qualify for the temporary accumulation exemption to the hazardous waste permit requirement found in 9 VAC 20-60-262 due to CLC's alleged failure to comply with this exemption's conditions, CLC provides the following responses to the observations allegedly made during the November 17, 2010 inspection (the "Inspection"), which are listed on page 3 of the Show Cause Letter:

1. The EPA alleges that CLC failed to label or mark each container storing hazardous waste with the words "Hazardous Waste," CLC has no additional

information to present relative to such allegations. However, the practices observed by the EPA during the Inspection had been approved by the Virginia Department of Environmental Quality (the "DEQ") upon inspection.

2. The EPA alleges that CLC failed to keep containers holding hazardous waste closed during storage except when necessary to add or remove waste. CLC incorporates by reference its response set forth in Section 2 below.
3. The EPA alleges that CLC accumulated greater than 55 gallons of hazardous waste in a satellite accumulation area. Such allegations are based on the Inspectors' (the "Inspectors") observation of containers of various volumes holding hazardous waste located next to 55 gallon hazardous waste drums in satellite accumulation areas associated with the U72 Pressure Sensitive Coating Line, the U73 Pressure Sensitive Coating Line and the Polyester Dyeing Line. CLC does not dispute that such conditions were present during the Inspection. However, the EPA alleges that CLC did not qualify for the temporary accumulation exemption, in part, because it accumulated more than 55 gallons of hazardous waste in a satellite accumulation area. It is not enough for EPA to have observed multiple waste containers in these satellite accumulation areas with aggregate volumes greater than 55 gallons. The EPA must establish that CLC actually had accumulated more than 55 gallons of hazardous waste in a satellite accumulation area at the time of the Inspection. Based on the information collected by the Inspectors and summarized in the Inspection Report, it cannot do so. Moreover, based on generator knowledge, waste quantities collected in these satellite accumulation areas did not exceed 55 gallons.

The satellite accumulation areas within each coating room and/or coating enclosure at CLC are comprised of wastes generated from two different processes and should be considered as two separate satellite accumulation areas (a coating operation with coating solution refuse, and a cleaning operation with solid rag waste). The coating and cleaning processes are often under control by different operators near the point of generation.

It is impossible to determine an actual volume amount of the rag waste since this type of solid waste is easily compacted into a much smaller volume (actual hazardous components are at an even smaller volume). Additionally, the rag waste collected in the smaller waste containers, *i.e.* containers with volumes of less than 21 gallons, are taken to the 90-day accumulation compactor at the end of each shift. Furthermore, for proper packaging of the liquid coating solution waste, the 55 gallon drums are never completely filled – anywhere from 3-7 gallons of headspace are always left in each drum after the drum is "full."

Finally, applicable regulations require that once the 55 gallon volume is met, the container is dated and moved to a 90-day accumulation area within 72 hours. With the high quantity of liquid wastes generated at these areas, along with the frequent transfer of the rag waste to the compactor – there is little chance that 55 gallons of hazardous waste is ever exceeded at the satellite accumulation points at CLC.

Due to the nature of the waste streams at issue and CLC's policies for managing such wastes, it is impossible to establish the exact volume of hazardous wastes that had accumulated in the three satellite accumulation areas listed above on the date of the Inspection. Consequently, CLC denies the EPA's factual allegations and disputes the EPA's legal conclusions set forth in Part 1 of Section I of the Show Cause Letter.

4. The EPA alleges that CLC failed to conduct annual refresher training for its employees. CLC incorporates by reference its response set forth in Section 6 below.
5. The EPA alleges that CLC failed to maintain documentation of job titles and job descriptions for each position at the Facility related to hazardous waste management. CLC incorporates by reference its response set forth in Section 7 below.
6. The EPA alleges that CLC failed to maintain an updated contingency plan. CLC incorporates by reference its response set forth in Section 8 below.

2. *Alleged Failure to Keep Containers Closed*

EPA alleges that during the Inspection of CLC's Facility, the EPA's inspectors observed that several containers throughout the Facility containing hazardous waste were not fully closed, which the EPA claims constitutes a violation of 9 VAC 20-60-264. To the extent that this allegation is based on the Inspectors' observation of a tube running through the open bung hole on a 55 gallon drum, as depicted in Photograph 11, attached to Mr. Matlin's December 2010 RCRA Compliance Evaluation Inspection Report (the "Inspection Report"), CLC disputes the EPA's allegations that this condition constitutes a violation of 9 VAC 20-60-264. Although waste was not being added to this drum during the Inspection, waste had been added to the drum shortly before the Inspection began and CLC continued adding waste to the drum shortly after the Inspection concluded. Moreover, to the extent that this alleged violation is based on the conditions depicted in Photographs 6, 7, 8, 15, 16, 17 and 18 attached to the Inspection Report, the waste container lids shown in those photographs have been fixed, replaced or adjusted since the Inspection so that they now close completely.

3. *Alleged Failure to Make a Waste Determination*

EPA alleges that CLC during the Inspection, the Inspectors observed aerosol cans that were disposed of in the general trash and that CLC violated 9 VAC 20-60-262 by failing to determine whether such aerosol cans were hazardous waste prior to their disposal. CLC disputes this allegation for two reasons. First, none of the pictures attached to the Inspection Report show the aerosol cans referenced therein. Second, it is CLC's policy never to dispose of aerosol cans containing any product or accelerant. Accordingly, per CLC's policy, it is only after CLC's employees determine that a particular aerosol can is empty, that CLC's employees dispose of it in the general trash. Thus, in the absence of documentation of aerosol cans in the general trash and in light of CLC's policy concerning disposal of aerosol cans, CLC denies the factual allegations and disputes the legal conclusions stated in Part 3 of Section I of the Show Cause Letter.

4. *Alleged Failure to Keep Universal Waste in Closed Containers.*

The EPA alleges that, at the time of the inspection, CLC failed to store universal waste lamps in closed containers in the boiler room. CLC has no additional information to present relative to such allegations.

5. *Alleged Failure to Label Universal Waste Containers.*

The EPA alleges that, at the time of the inspection, CLC failed to properly label the containers in which universal waste lamps were stored in the boiler room. CLC has no additional information to present relative to such allegations.

6. *Alleged Failure to Conduct Hazardous Waste Training.*

EPA alleges that, during the Inspection, the Inspectors observed that there was no documentation of consistent annual refresher training for several employees whose job responsibilities, the EPA claims, would require that they receive hazardous waste training. Enclosed with this letter as **Exhibit 1** are certificates certifying that certain of the employees identified by EPA received annual hazardous waste training in the years listed in the Show Cause Letter.

The enclosed certificates establish that John Braziel attended hazardous waste management annual training in 2007, 2008, 2009 and 2010 and Barry Hylton received hazardous waste management annual training in 2008, 2009 and 2010. Certificates establishing that Mr. Hylton's predecessor, Alok Dhagat, attended annual hazardous waste management training in 2006 and 2007 are also enclosed. If CLC locates a certificate for the annual hazardous waste training attended by John Braziel in 2006, we will forward it to you.

Also enclosed as **Exhibit 2** is a copy of a Personnel Action Notice form establishing that Charles Clark was promoted to the position of Assistant Lead Mix Technician on November 14, 2010. Thus, he had been performing the job requiring him to receive hazardous waste management training for a

period of three days as of the date of the Inspection. Consequently, CLC did not have a certificate of Mr. Clark's attendance at hazardous waste management training on file during the Inspection, because he had only been working in a position requiring such training for three days. Under 40 C.F.R. § 264.16(b), Mr. Clark was required to complete a hazardous waste management training program within six months after his assignment to the position of Assistant Lead MVX Technician. For this reason, the absence of a training certification for Mr. Clark in CLC's files on the date of the Inspection does not constitute a violation of 9VAC20-60-264.

CLC disagrees with the EPA's allegation that Ernie Showfety's job responsibilities would require him to receive hazardous waste training. Enclosed as **Exhibit 3** is a letter signed by Mr. Showfety concerning his involvement with hazardous waste management. CLC acknowledges that Mr. Showfety is listed as an alternate Emergency Coordinator in CLC's contingency plan because he is one of CLC's officers. He is not, however, involved in the daily management of hazardous wastes, nor is he the primary emergency coordinator listed in CLC's contingency plan. For these reasons, CLC disagrees with the EPA's conclusions that Mr. Showfety's job responsibilities require that he receive hazardous waste training.

For the foregoing reasons, CLC disputes the EPA's allegation that it is in violation of 9 VAC 20-60-264 or 40 C.F.R. § 264.16.

7. *Alleged Failure to Maintain Job Description Records*

The EPA alleges that, during the Inspection, the Inspectors determined that CLC's training database did not contain the job titles or written job descriptions of employees whose positions relate to hazardous waste management. Enclosed as **Exhibit 4** are copies of the following documents: (1) a list classifying CLC's employees by department or area; (2) a list of the training required for each position at the Facility; (3) training checklists for the positions of Mix Room Operator, Shipping Technician, Rewind Operator, and Slitter Operator; (4) job descriptions for the positions of Lead Machine Operator, Assistant Lead Machine Operator and Helper Machine Operator; and (5) a training matrix summarizing the training required for each position at the Facility.

When viewed in the aggregate, the documents attached hereto as **Exhibit 4** contain all of the information that CLC was required to keep on file at the Facility under 40 C.F.R. § 264.16. Accordingly, CLC was not in violation of 9 VAC 20-60-264 because, at the time of the Inspection, it maintained records documenting all of the information required under 40 C.F.R. § 264.16 on file at the Facility.

8. *Alleged Failure to Maintain an Updated Contingency Plan.*

EPA alleges that the list of emergency equipment set forth in the contingency plan that was provided to EPA during the Inspection was insufficient. Specifically, in Section 6.3 of the Inspection Report it is stated that "although the Facility included a site drawing showing their spill kit location, no list of spill equipment was found." Since the Inspection, CLC has amended its contingency plan to address

Ms. Jessica O'Neill
Mr. Martin Matlin
May 20, 2011
Page 6

this one concern in accordance with the EPA's comments. However, prior to the Inspection, based on reports summarizing the results of prior DEQ inspections, CLC had been lead to believe that its contingency plan was in compliance with all applicable state and federal laws and regulations.

Enclosed as **Exhibit 5** is a copy of a letter dated May 15, 2007 from Ernie Showfety to Rebecca Wright at the DEQ transmitting a revised contingency plan for the Facility. Also enclosed as **Exhibit 6** is a letter dated June 22, 2007 from Ms. Wright to CLC's Vice President of Operations, Matt Phillips, confirming that CLC's Facility was in compliance with the Virginia Waste Management Act. In the checklist attached to her letter, Ms. Wright indicates that the emergency equipment information set forth in CLC's contingency plan was sufficient. Based on this information, CLC believed that its contingency plan was sufficient at the time of the Inspection. CLC, accordingly, disputes the EPA's allegation that its contingency plan failed to contain a list of all emergency equipment located at the Facility in alleged violation of 9 VAC 20-60-264.

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response to Information Request and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.

Sincerely,



M. Brandon Lane
Product Development & Process Support Engineer
Technical Service Manager, Environmental Compliance
Commonwealth Laminating & Coating, Inc.
345 Beaver Creek Drive
Martinsville, VA 24112
Tel: 276 632 4991 Ext. 244
blane@windowfilm.net

cc: Charles L. Williams, Esq.
Paul G. Klockenbrink, Esq.
Maxwell H. Wiegard, Esq.

Exhibit 1

Certificate

This is to certify that

John Braziel

Commonwealth Laminating & Coating, Inc.

has successfully completed

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 263.116
presented by

Environmental Resource Center

101 Center Pointe Drive, Cary, NC 27513 919-469-1585

www.ercweb.com



Brian Karnofsky, Instructor

November 16, 2005

Employer

Certificate Number: 98239

Certificate

This is to certify that

John Brazil

Commonwealth Laminating & Coating


has successfully completed

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 265.16

presented by

ENVIRONMENTAL RESOURCE CENTER
101 Center Pointe Drive, Cary, NC 27513 919-469-1585
www.ercweb.com


Darryl Shaver, Instructor

August 22, 2007

Date

Certificate Number: 47506

Certificate

This is to certify that

John Brazier

Commonwealth Laminating & Coating

has attended

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 265.16

presented by

Environmental Resource Center

101 Center Pointe Drive, Cary, NC 27513 919-469-1585

www.ercweb.com



Daryl Shaver, Instructor

September 17, 2008

Date

Certificate Number: 53524

Certificate

This is to certify that

John Braziel

Commonwealth Laminating & Coating, Inc.

has successfully completed

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 265.16

presented by

Environmental Resource Center
101 Center Pointe Drive, Cary, NC 27513 919-469-1585
www.ercweb.com

Kristie Cook Absher

Kristie Absher, Instructor

November 4, 2009

Date

Certificate Number: 58817

Certificate

This is to certify that

John Brazier

Commonwealth Laminating & Coating
has successfully completed

Hazardous Waste Management

Annual Update - Webcast

in accordance with 40 CFR 265.16
presented by

Environmental Resource Center

101 Center Pointe Drive, Cary, NC 27513 919-469-1585

www.ercweb.com

Kristie Cook Absher

Kristie Cook Absher, Instructor

November 9, 2010

Certificate Number: CFWS5023

Certificate

This is to certify that

Barry D. Hyllton

Commonwealth Laminating & Coating, Incorporated

has attended

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 265.16

presented by

Environmental Resource Center

101 Center Pointe Drive, Cary, NC 27513 919-469-1585

www.ercweb.com



Daryl Shaver, Instructor

September 17, 2008

Date

Certificate Number: 53526

Certificate

This is to certify that

Barry D. Hylton

Commonwealth Laminating & Coating, Inc.

has successfully completed

Hazardous Waste Management Annual Update Training Online

in accordance with 40 CFR 265.16

presented by

Environmental Resource Center
101 Center Pointe Drive, Cary, NC 27513 919-469-1585
www.ercweb.com

Kristie Cook Absher

Kristie Absher, Instructor

November 4, 2009

Date

Certificate Number: 58815

Certificate

This is to certify that
Barry Hylton
has successfully completed

**Hazardous Waste Management
Annual Update - Webcast**
in accordance with 40 CFR 265.16
presented by

Environmental Resource Center
101 Center Pointe Drive, Cary, NC 27513 919-469-1585
www.ercweb.com

Kristie Cook Absher

Kristie Cook Absher, Instructor

November 9, 2010

Certificate Number: CFWS5019

Certificate

This is to certify that

Alok Dhagat

Commonwealth Laminating & Coating, Incorporated

has successfully completed

Hazardous Waste Management: The Complete Course

in accordance with 40 CFR 265.16

presented by

ENVIRONMENTAL RESOURCE CENTER

101 Center Pointe Drive, Cary, NC 27513 919-469-1585

www.ercweb.com

Ruth V. Knight

Kristie Cook Absher, Instructor

August 14-15, 2006

Date

Certificate Number: 3120

Certificate

This is to certify that

Alok Dhagat


Commonwealth Laminating & Coating, Incorporated

has successfully completed

**Hazardous Waste Management
Annual Update Training Online**
in accordance with 40 CFR 265.16

presented by

ENVIRONMENTAL RESOURCE CENTER
101 Center Pointe Drive, Cary, NC 27513 919-469-1585
www.ercweb.com


Darryl Shaver, Instructor

August 22, 2007

Date

Certificate Number: 47508

Exhibit 2

P

ersonnel Action Notice

Employee Information

PLEASE PRINT

Effective Date of Change 11/28/10 ☐ New Hire ☒ Change ☐ Separation
 Name CLARK CLARK CLARK Position OPER → MIX TECH
 Social Security # _____ Employee/Payroll # _____ Department MIX

New Employee Information

Address _____ Phone _____
 Status ☐ Full-time ☐ Part-time ☐ Full-time Temporary ☐ Part-time Temporary ☐ Other
 Position _____ ☐ Exempt ☐ Non-exempt ☐ Hourly W-4 attached? ☐ Yes ☐ No

Current Employee Change(s)

TYPE	FROM	TO	COMMENTS
Personal <input type="radio"/> Address change <input type="radio"/> Change of insurance <input type="radio"/> Insurance Eligibility			
Job <input type="radio"/> Reclassified <input type="radio"/> Transfer <input type="radio"/> Promotion			
Salary/Wage <input type="radio"/> Merit increase <input type="radio"/> Length of service increase <input type="radio"/> Promotion <input type="radio"/> Union scale	13.90	14.50	→ MIX TECH, LEAD ASST + 0.60 + 4.3%
Employment <input type="radio"/> Resignation <input type="radio"/> Retirement <input type="radio"/> Separation <input type="radio"/> End of probationary period <input type="radio"/> Other			
Leave of Absence <input type="radio"/> Resignation <input type="radio"/> Retirement <input type="radio"/> Separation <input type="radio"/> End of probationary period			

Separation

Separation Date ____/____/____ Last Day Worked ____/____/____ Last Day Paid ____/____/____
☐ Voluntary Separation ☐ Involuntary Separation Notice of COBRA Rights provided on ____/____/____
 Election of COBRA ☐ Yes ☐ No Start date for coverage ____/____/____
 If yes, describe type of coverage elected _____

Additional Comments

Submitted by [Signature] Date 11/30/10
 Approved by _____ Date ____/____/____

Exhibit 3



COMMONWEALTH
LAMINATING & COATING, INC.

345 Beaver Creek Drive
Martinsville, VA 24112

May 9, 2011

Re: Notice of Involvement in Daily Waste Activity at CLC

In my position as Vice President of Operations, and as a general emergency contact, I do not carry daily responsibility in the management of hazardous wastes. I do act as a first responder for any emergency response needs and am very familiar with the requirements of that role. While some of these duties may branch into waste handling, it does not require that I have detailed training in the day-to-day needs of those tasks. There are trained resources available if that level of knowledge were to be required for first response.

Sincerely,

Ernie Showfety
Vice President of Operations
Commonwealth Laminating and Coating, Inc.
eshowfety@windowfilm.net
(276) 632-4991, x293